

## **FISCAL NOTE**

### **SB 3793 - HB 3684**

March 6, 2008

**SUMMARY OF BILL:** Increases the penalty for a second or subsequent offense of driving under the influence (DUI) to a Class B felony with a mandatory minimum 20-year sentence to be served without eligibility for diversion, probation or parole, or sentence reduction credits. Requires lifetime suspension of the offender's driver's license.

#### **ESTIMATED FISCAL IMPACT:**

**Decrease State Revenue - \$506,000**

**Increase State Expenditures - \$1,287,468,000/Incarceration\***

**Decrease Local Revenue – Exceeds \$1,000,000**

**Decrease Local Expenditures – Exceeds \$13,500,000**

Assumptions:

- Under current law a second DUI violation is a misdemeanor punishable by a fine ranging from \$600 to \$3,500, revocation of driver's license for two years, and confinement in the county jail for 45 days to 11 months, 29 days. A third violation is a misdemeanor punishable by a fine ranging from \$1,100 to \$10,000, revocation of driver's license for three to ten years, and confinement in the county jail for 120 days to 11 months, 29 days. A fourth or subsequent violation is a Class E felony punishable by a fine ranging from \$3,000 to \$15,000, revocation of driver's license for five years, and confinement for not less than 150 consecutive days to be served day-for-day up to six years.
- According to the Department of Safety (DOS), for FY06-07 there were 5,060 DUI convictions for a second or subsequent violation whose licenses would have been revoked and would currently pay a \$100 reinstatement fee. Under this bill, those licenses would be revoked for life. The decrease in state revenue is estimated to be \$506,000 (\$100 x 5,060).
- During FY06-07 there were 4,303 DUI convictions for a second or third violation. Under this bill, 4,303 offenders would be convicted of a Class B felony with a mandatory minimum 20-year sentence to be served without eligibility for diversion, probation or parole in the first year.

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According to the U.S. Census Bureau, population growth in Tennessee has been 1.09 percent per year for the past 10 years, yielding a projected compound population growth of 13.6 percent over the next 10 years. Population growth will result in an additional 493 offenders in the tenth year. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 4,796 offenders. According to the Department of Correction, the average operating cost per inmate per day for calendar year 2008 is \$62.78. The cost per inmate at 20.0 years is \$458,607.90 ( $\$62.78 \times 7,305$  days). The cost per inmate in the tenth year is \$229,303.95 ( $\$62.78 \times 3,652.50$  days). The total additional operating cost in the tenth year for 4,796 offenders is \$1,099,741,744 ( $\$229,303.95 \times 4,796$ ).

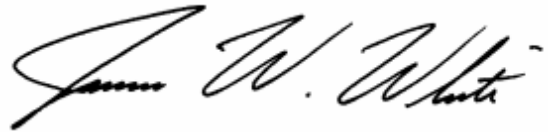
- During FY06-07 there were 757 DUI convictions for a fourth or subsequent violation. Under this bill, 757 offenders would be convicted of a Class B felony and would serve an additional 19.7 years (an increase from a Class E felony at 0.3 years to a mandatory, minimum 20.0 years) in the first year. Population growth will result in an additional 87 offenders in the tenth year. The maximum cost in the tenth year is based on 844 offenders. The cost per inmate at 0.3 years is \$6,879.43 ( $\$62.78 \times 109.58$  days). The cost per inmate at 20.0 years is \$458,607.90 ( $\$62.78 \times 7,305$  days). The cost per inmate in the tenth year is \$229,303.95 ( $\$62.78 \times 3,652.50$  days). The additional cost from increasing the average sentence length from 0.3 years to 20.0 years is \$222,424.52 ( $\$229,303.95 - \$6,879.43$ ). The total additional operating cost for 844 offenders in the tenth year is \$187,726,294.90 ( $\$222,424.52 \times 844$ ).
- Any impact on caseloads for the state trial courts can be accommodated within existing judicial resources.
- Under current law, DUI fines are retained by the county in which the violation occurred. This bill eliminates fines for repeat DUI offenses unless a child under 18 accompanied the offender at the time of the offense. The only remaining fines are for first-time DUI offenders (\$350 to \$1,500); a misdemeanor offense in which a child under 18 accompanied the offender but no injury occurred to the child (minimum \$1,000); a Class D felony in which the child suffers serious bodily injury (up to \$5,000); and a Class C felony in which the child is killed (up to \$10,000). The elimination of fines will reduce local revenue by an amount exceeding \$1,000,000.
- Local governments will experience reduced incarceration costs for DUI offenders who are shifted from local jails to state prison facilities. Local jails are currently reimbursed up to a cap of \$35 per day for the cost of housing state prisoners (except for Davidson County, Shelby County, and Johnson City, which receive higher rates). Assuming the cost of housing local prisoners is equivalent to the state reimbursement rate, and applying the minimum period of incarceration to a weighted average

of offenders times the minimum number of days served for second or subsequent DUI offenses, local government expenditures will decrease in an amount exceeding \$13,500,000.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/lsc